

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
MCT-01 HA-05 AID-05 /079 W
-----086695 231230Z /45

P R 231015Z MAY 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC PRIORITY 7624
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO
AMEMBASSY ASUNCION
AMEMBASSY BOGOTA
AMEMBASSY BUENOS AIRES
AMEMBASSY CARACAS
AMEMBASSY LAPAZ
AMEMBASSY LIMA
AMEMBASSY MONTEVIDEO
AMEMBASSY QUOTO
AMEMBASSY SANTIAGO

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 4087

CARACAS ALSO FOR AMBASSADOR SAYRE

EO 11652 GDS
TAGS PINT BR
SUBJECT: GEISEL'S REFORM PACKAGE REVEALED

REF: BRASILIA 4063

1. SUMMARY: THE GOB'S LONG-AWAITED PACKAGE OF PROPOSED INSTITUTIONAL CHANGES WAS MADE PUBLIC IN GENERAL OUTLINE LAST WEEK. IT WAS PRESENTED TO ARENA'S NATIONAL EXECUTIVE COMMITTEE BY SENATE PRESIDENT PETRONIO PORTELLA, WHOSE INTERMITTENT NINE-MONTH DIALOGUE WITH REPRESENTATIVES OF VARIED CIVILIAN SECTORS PRECEDED THE FORMULATION OF A SET OF PROPOSALS NOW BEING SUBMITTED TO THE ARENA CONGRESSIONAL

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REPRESENTATION. THE PACKAGE HAD EARLIER (ON MAY 11) BEEN SUBMITTED TO GEISEL'S THREE MILITARY MINISTERS FOR THEIR CONSIDERATION. ESSENTIALLY, IT CALLS FOR REPLACING INSTITUTIONAL ACT NO.5 AND OTHER "EXCEPTIONAL LEGISLATION" BY THREE CONSTITUTIONAL SAFEGUARDS FOR THE DEFENSE OF THE STATE AND SOCIETY; ENDING THE PERMANENT INELIGIBILITY FOR PUBLIC OFFICE OF HUNDREDS OF INDIVIDUALS WHOSE POLITICAL RIGHTS HAVE BEEN SUSPENDED; AND THE AT LEAST PARTIAL

REINSTATEMENT OF HABEAS CORPUS FOR POLITICAL CHARGES AND OF CERTAIN PREROGATIVES OF JUDICIARY. ACCORDING TO PORTELLA, THE PROPOSALS--WHICH ARE STILL SUBJECT TO MODIFICATION--REPRESENT THE FIRST STATE OF PROJECTED REFORMS AND ARE TO TAKE EFFECT UPON THE MARCH 15, 1979, INAUGURATION OF GENERAL FIGUEIREDO AS THE NEXT PRESIDENT OF BRAZIL. THEY ARE STILL TO BE SUBMITTED TO THE MDB FOR ITS CONSIDERATION, THEN TO GEISEL FOR FINAL APPROVAL, AND THEN TO THE CONGRESS. REACTION TO THE PACKAGE HAS BEEN LUKEWARM AT BEST, AND ITS REVELATION WAS LARGELY OVERSHADOWED BY LAST WEEK'S MORE SENSATIONAL NEWS--THE POSSIBILITY OF AN ALTERNATE MILITARY CANDIDATE TO FIGUEIREDO (REFTEL). THERE IS SPECULATION THAT, TO RETAIN THE POLITICAL INITIATIVE, GEISEL MIGHT TAKE SOME ACTION TO IMPROVE THE ACCEPTABILITY OF HIS PROPOSALS. END SUMMARY.

2. AS DESCRIBED BY ARENA DEPUTY PRISCO VIANNA, SPOKESMAN FOR SENATOR PORTELLA, THE REFORM PACKAGE CONSISTS ESSENTIALLY OF THE FOLLOWING:

A) ABROGATION OF ARTICLE 182 OF THE CONSTITUTION, WHICH WAS INSERTED AS A "TRANSITORY PROVISION" ON OCTOBER 17, 1969, SPECIFICALLY TO INCORPORATE INSTITUTIONAL ACT NO.5 (IA-5) OF DECEMBER 13, 1968, IN THE CONSTITUTION, AS WELL AS SUBSEQUENT INSTITUTIONAL ACTS.
B) ABROGATION OF ARTICLE 185 OF THE CONSTITUTION, ALSO INSERTED AS A "TRANSITORY PROVISION", WHICH READS: "CITIZENS WHO.... HAVE UNDERGONE THE SUSPENSION OF THEIR POLITICAL RIGHTS SHALL BE INELIGIBLE FOR THE POSITIONS OF PRESIDENT AND VICE PRESIDENT OF THE REPUBLIC, GOVERNOR AND VICE GOVERNOR, AND PREFECT (MAYOR) AND VICE PREFECT."
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THIS ARTICLE HAS HAD THE EFFECT OF MAKING PERMANENTLY INELIGIBLE, ESPECIALLY AT THE MUNICIPAL LEVEL, HUNDREDS OF CITIZENS WHOSE SUSPENSION OF POLITICAL RIGHTS MAY HAVE EXPIRED YEARS AGO. ABROGATION OF THIS ARTICLE WOULD BE A FIRST SMALL STEP TOWARD MEETING WIDESPREAD DEMANDS FOR AMNESTY (BRASILIA 3718).

C) RESTITUTION OF HABEAS CORPUS FOR POLITICAL CRIMES AND OF CERTAIN PREROGATIVES OF THE JUDICIARY, E.G., TENURE, IMMOVABILITY.

3. ABROGATION OF ARTICLE 182 WOULD CAUSE THE DISAPPEARANCE OF IA-5, WHICH HAS GIVEN THE PRESIDENT ALL-ENCOMPASSING POWERS AND HAS LONG BEEN THE PRINCIPAL TARGET OF REFORMISTS. IT WILL BE RECALLED THAT GEISEL OFFICIALLY FORESHADOWED ITS DISAPPEARANCE ON DECEMBER 1, 1977, ADDING, HOWEVER, THAT IT WOULD BE REPLACED BY ADEQUATE CONSTITUTIONAL SAFEGUARDS TO PROTECT THE STATE AND SOCIETY (77 BRASILIA 9900). AS OUTLINED BY VIANNA, THESE SAFEGUARDS WOULD BE:
A) RETENTION OF THE STATE OF SIEGE AS IT NOW EXISTS IN THE CONSTITUTION AS ARTICLE 155;
B) "MEASURES OF EMERGENCY"; AND
C) A "STATE OF EMERGENCY."

THE LATTER TWO, PRESUMABLY TO BE INVOKED BY THE PRESIDENT (ALTHOUGH THERE IS TALK OF A POSSIBLE COUNCIL OF STATE OR OF CONSTITUTIONAL DEFENSE), WOULD BE SIMILAR TO THE STATE OF SIEGE, EXCEPT THAT THEY

WOULD NOT REQUIRE, AS DOES THE STATE OF SIEGE, CONGRESSIONAL AUTHORIZATION. THE PRESIDENT WOULD MERELY BE REQUIRED TO INFORM THE CONGRESS OF HIS ACTIONS AND THE REASONS THEREFORE.

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C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 4087

THE "MEASURES OF EMERGENCY" WOULD BE GEOGRAPHICALLY RESTRICTED AND APPLICABLE IN CASES OF LIMITED EMERGENCIES, WHEREAS THE "STATE OF EMERGENCY COULD BE INVOKED FOR RENEWABLE PERIODS OF NINETY DAYS AND, BY NOT REQUIRING CONGRESSIONAL AUTHORIZATION, ARE OBVIOUSLY INTENDED TO SATISFY MILITARY CONCERNS THAT THE GOVERNMENT BE ABLE TO ACT IMMEDIATELY IN ITS DEFENSE WHEN DEEMED NECESSARY. AFTER THE EMERGENCY ENDED, CITIZENS AFFECTED BY THE MEASURES WOULD HAVE THE RIGHT OF JUDICIAL APPEAL, INCLUDING PERSONAL DEFENSE.

4. IN TERMS OF THE HISTORY OF THE PAST TEN YEARS, ILLUSTRATED AS RECENTLY AS APRIL AND JUNE 1977, THE MAJOR EFFECTS OF THE ABROGATION OF IA-5 WOULD BE THE REMOVAL OF THE PRESIDENT'S AUTHORITY TO CLOSE THE CONGRESS, CASSATE THE MANDATES OF ELECTED AND OTHER OFFICIALS, AND SUSPEND INDIVIDUAL POLITICAL RIGHTS. UNDER PORTELLA'S PROPOSALS,
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THE PRESIDENT WOULD, HOWEVER, HAVE RECOURSE, THROUGH THE ATTORNEY GENERAL, TO THE SUPREME FEDERAL TRIBUNAL TO EFFECT THE LATTER TWO ACTIONS.

5. THERE HAVE BEEN CONFLICTING VERSIONS OF THE EXTENT TO WHICH GEISEL IS CONTEMPLATING REINSTATEMENT OF HABEAS CORPUS FOR POLITICAL CHARGES. SOME ACCOUNTS CLAIM THAT GEISEL INTENDS UNRESTRICTED REINSTATEMENT; OTHERS--INCLUDING PORTELLA PUBLICLY--STATE THAT THE QUESTION OF HABEAS CORPUS IN CASES OF TERRORISM, BANK ROBBERY AND OTHER VIOLENT ACTS COMMITTED OSTENSIBLY FOR POLITICAL MOTIVES IS STILL UNDER DISCUSSION.

6. PORTELLA EXPLAINED THAT THE ABOVE PROPOSALS REPRESENTED THE FIRST STATE OF PROJECTED REFORMS WHICH IS TO TAKE EFFECT UPON GENERAL FIGUEIREDO'S INAUGURATION ON MARCH 15, 1979; THE SECOND STATE, FOR WHICH NO TIMING WAS INDICATED, WOULD ENTAIL REVOCATION OF DECREE LAW 477 ON STUDENT ACTIVITY (NEVER USED DURING THE GEISEL ADMINISTRATION), AND REFORMULATIONS OF THE PRESS LAW AND THE NATIONAL SECURITY LAW. NOTHING APPEARS TO HAVE BEEN SAID ABOUT THE DECREE LAW BARRING POLITICAL PARTIES FROM ACCESS TO RADIO AND TELEVISION FOR PARTISAN PURPOSES; ALTHOUGH PROVISIONS FOR ADDITIONAL POLITICAL PARTIES WOULD SEEM TO BE UNDER CONSIDERATION.

7. AT WEEK'S END, PORTELLA'S PACKAGE WAS SUBMITTED TO ARENA'S CONGRESSIONAL DELEGATIONS FOR THEIR STUDY AND COMMENT. BEFORE RETURNING WITH FINAL RECOMMENDATIONS TO PRESIDENT GEISEL FOR HIS APPROVAL--SOMETIME AFTER WHICH THEY WILL BE SUBMITTED TO THE CONGRESS--PORTELLA IS EXPECTED (AT LONG LAST) TO SUBMIT HIS PACKAGE TO MDB PRESIDENT ULYSSES GUIMARAES FOR REACTION AND SUGGESTIONS. PORTELLA HAS INDICATED THAT SOME MDB SUGGESTIONS COULD WELL BE INCORPORATED INTO THE PACKAGE. THE PROPOSALS WIL NOT BE SUBMITTED TO THE MDB, HOWEVER, UNTIL AFTER ARENA HAS REPORTED ITS ACQUIESCENCE TO PORTELLA, AND ALSO, PRESUMABLY, AFTER THE PROPOSALS HAVE BEEN

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ACQUIESCED IN BY THE THREE MILITARY MINISTERS.

8. COMMENT: THE LATTER PROSPECT IS PERHAPS THE CLEAREST INDICATION YET THAT GEISEL'S MUCH ANTICIPATED BUT LEARLY LIMITED REFORM PACKAGE MAY WELL TURN OUT TO BE, AT LEAST IN ITS INITIAL FORM, TOO LITTLE AND TOO LATE. REACTION TO IT IN THE PRESS, IN SOCIETY AT LARGE, AND (UNOFFICIALLY) IN THE MDB HAS BEEN, AT BEST, LUKEWARM--EVEN AMONG ARENA REPRESENTATIVES. THE MDB HAS NOT COMMENTED FORMALLY AND WILL NOT UNTIL OFFICIALLY APPRISED OF THE PROPOSALS BY PORTELLA. THE FACT IS SIMPLY THAT TOO MANY PEOPLE HAVE BEEN TALKING ABOUT THESE AND MORE EXTENSIVE REFORMS

FOR TOO MANY MONTHS, AND THAT WHAT WAS REVEALED LAST WEEK WAS NOT ONLY WIDELY EXPECTED BUT, IN A LARGE SENSE, ANTI-CLIMACTIC. PORTELLA'S PACKAGE CERTAINLY LAGGED FAR BEHIND WHAT RECENT MEETINGS OF THE NATIONAL CONFERENCE OF BRAZILIAN BISHOPS AND THE BRAZILIAN BAR ASSOCIATION RECOMMENDED.

9. BEYOND THAT, PORTELLA'S REVELATIONS WERE LARGELY OVERSHADOWED BY MUCH MORE SENSATIONAL NEWS LAST WEEK--THAT POINTING TO A POSSIBLE ALTERNATE PRESIDENTIAL CANDIDACY IN OPPORION TO THAT OF GENERAL FIGUEIREDO IN THE OCTOBE 15 INDIRECT ELECTION (REFTEL). THE LARGELY HIDDEN INTRAMURAL MANEUVERING WITHIN THE MILITARY ESTABLISHMENT THAT HAS LED TO WIDESPREAD PUBLIC DISCUSSION OF THIS POSSIBILITY SEEMS ALREADY TO HAVE HAD AN IMPORTANT EFFECT ON GEISEL'S PLANS FOR HIS REFORM PROPOSALS: THAT OF VETTING THEM THROUGH HIS MILITARY MINISTERS AND ALLOWING THIS FACT TO BE WIDELY PUBLICIZED. THIS IS IN SHARP CONTRAST TO THE WAY HE ACTED VIS-A-VIS THE MILITARY IN SELECTING FIGUEIREDO AS HIS SUCCESSOR AND IN THE HIGHLY AUTHORITARIAN MANNER IN WHICH ARENA'S CANDIDATES FOR STATE GOVERNORSHIPS WERE SELECTED LAST MONTH (BRASILIA 4014).

10. PORTELLA MADE A POINT LAST WEEK OF STRESSNG THAT HIS PROPOSALS ARE SUBJECT TO SOME MODIFICATION IN THE CONSULTATIONS NOW UNDERWAY. SOMEWHAT UNUSUAL WAS THE REINFORCEMENT OF PORTELLA'S STATEMENT ON MAY 18 BY PRSIDENTIAL SPOKESMAN COLONEL RUBEM LUDWIG, WHO SAID THE PROPOSALS COULD "UNDERGO ALTERATIONS, AS THE CONSULTATIVE CONFIDENTIAL

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PROCESS IS STILL UNDERWAY". JUST WHAT THAT MAY MEAN IS THE SUBJECT OF CONSIDERABLE SPCULATION--SOME OF IT FOCUSING ON THE POSSIBILITY THAT GEISEL, TO RETAIN THE POLITICAL INITIATIVE, MIGHT CONSIDER "REFORMING" HIS REFORM PACKAGE AS CONCERNS SUBSTANCE, TIMING, OR BOTH.
JOHNSON

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